

STATE BAR COURT OF CALIFORNIA  
HEARING DEPARTMENT - LOS ANGELES

In the Matter of	)	Case Nos.: <b>09-O-13229-RAP</b>
	)	<b>(09-O-13420; 09-O-13673;</b>
<b>CHRISTOPHER LEE DIENER,</b>	)	<b>09-O-14354; 09-O-15728;</b>
	)	<b>09-O-15948; 09-O-15981;</b>
<b>Member No. 187890,</b>	)	<b>10-O-06637; 10-O-08119;</b>
	)	<b>11-O-13395; 11-O-15813;</b>
A Member of the State Bar.	)	<b>12-O-13637); 12-O-13636 Cons.</b>
	)	
	)	<b>DECISION AND ORDER OF</b>
	)	<b>INVOLUNTARY INACTIVE</b>
	)	<b>ENROLLMENT</b>
	)	
	)	

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Respondent Christopher Lee Diener (respondent) was charged with 39 counts of misconduct involving 13 different clients. He failed to appear at the trial of this case and his default was entered. The Office of the Chief Trial Counsel (State Bar) filed a petition for disbarment under rule 5.85 of the Rules of Procedure of the State Bar.<sup>1</sup>

Rule 5.85 provides the procedure to follow when an attorney fails to appear at trial after receiving adequate notice and opportunity. The rule provides that, if an attorney’s default is entered for failing to appear at trial and the attorney fails to have the default set aside or vacated

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<sup>1</sup> Unless otherwise indicated, all references to rules are to this source.

within 90 days, the State Bar will file a petition requesting the court to recommend the attorney's disbarment.<sup>2</sup>

In the instant case, the court concludes that the requirements of rule 5.85 have been satisfied, and therefore, grants the petition and recommends that respondent be disbarred from the practice of law.

### **FINDINGS AND CONCLUSIONS**

Respondent was admitted to the practice of law in this state on May 20, 1997, and has been a member since then.

#### **Procedural Requirements Have Been Satisfied**

On June 29, 2012, the State Bar filed and properly served a notice of disciplinary charges (First NDC) on respondent at his membership records address by certified mail, return receipt requested. The NDC notified respondent that his failure to appear at the State Bar Court trial would result in a disbarment recommendation. (Rule 5.41.) On July 27, 2012, respondent filed his Answer to the First NDC.

On October 31, 2012, the State Bar filed and properly served a second notice of disciplinary charges (Second NDC) on respondent at his membership records address by certified mail, return receipt requested. The Second NDC notified respondent that his failure to appear at the State Bar Court trial would result in a disbarment recommendation. (Rule 5.41.) On December 5, 2012, respondent filed his response to the Second NDC.

By order filed December 6, 2012, the two NDCs were consolidated pursuant to a status conference order.

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<sup>2</sup> If the court determines that any due process requirements are not satisfied, including adequate notice to the attorney, it must deny the petition for disbarment and take other appropriate action to ensure that the matter is promptly resolved. (Rule 5.85(E)(2).)

Thereafter, several status conferences were scheduled and held, including a status conference on August 9, 2013. At that status conference, which respondent attended telephonically, the court set the consolidated matter for trial to commence at 9:30 a. m. each day beginning on October 28, 2013, and to continue through November 1, 2013.

A status conference was scheduled to take place on October 8, 2013, at 1:30 p.m. Both the deputy trial counsel for the State Bar and respondent appeared telephonically at the October 8, 2013 status conference. The court set a further telephonic pretrial status conference for October 15, 2013, at 1:30 p.m. Respondent, however, failed to appear for the October 15, 2013 status conference at which the court ordered that the previously set trial dates were to remain on calendar. A copy of the October 15, 2013 status conference order was properly served on respondent by first class mail at the address provided in respondent's Answer to the Second NDC, which was also his official membership records address.

Respondent failed to appear for trial on October 28, 2013, at 9:30 a.m. On October 28, 2013, the court ordered that the trial would commence on October 30, 2013, at 9:30 a.m. A copy of the October 28, 2013 order was properly served on respondent by first class mail at the address provided in respondent's Answer to the Second NDC, which was also his official membership records address.

On October 30, 2013, at approximately 9:30 a.m., the State Bar, by and through Deputy Trial Counsel Timothy Byer (DTC), appeared for trial; but, respondent did not. A telephonic conference call then took place. The DTC was present in court and respondent appeared telephonically. The court informed the parties that trial would commence that afternoon at 1:30 p.m. The State Bar, by and through the DTC, appeared for trial on October 30, 2013, at 1:30 p.m.; but, respondent did not appear.

Finding that all of the requirements of rule 5.81(A) were satisfied, the court entered respondent's default by order filed October 30, 2013. The order notified respondent that if he did not timely move to set aside or vacate his default, the court would recommend his disbarment. The order also placed respondent on involuntary inactive status, effective November 2, 2013, under Business and Professions Code section 6007, subdivision (e), and he has remained inactive since that time.

Respondent did not seek to have his default set aside or vacated. (Rule 5.83(C)(2) [attorney has 90 days after order entering default is served to file motion to set aside default].) On January 31, 2014, the State Bar properly filed and served the petition for disbarment. As required by rule 5.85(A), the State Bar reported in the petition that: (1) respondent has not contacted the State Bar since October 30, 2013, the date his default was entered and the order entering his default was served; (2) there are no other investigations or disciplinary matters pending against respondent; (3) respondent has one record of prior discipline; and (4) the Client Security Fund (CSF) has paid out claims based on respondent's prior disciplinary matter. Respondent has not responded to the petition for disbarment or moved to set aside or vacate the default. The case was submitted for decision on February 26, 2014.

Respondent has been disciplined on one prior occasion.<sup>3</sup> Pursuant to a Supreme Court order filed on January 6, 2011, respondent was suspended for three years, the execution of which was stayed, and he was placed on probation for four years subject to conditions, including that he be suspended for fifteen months (with credit given for the period of involuntary inactive enrollment). In the prior disciplinary matter, respondent stipulated to a plea of nolo contendere regarding violations of: (1) rule 1-300(B) of the Rules of Professional Conduct (engaging in the

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<sup>3</sup> The court takes judicial notice of the pertinent State Bar Court records regarding this prior discipline, admits them into evidence, and directs the Clerk to include copies in the record of this case.

unauthorized practice of law in another jurisdiction) and (2) rule 4-200(A) of the Rules of Professional Conduct (charging and collecting an illegal fee).

### **The Admitted Factual Allegations Warrant the Imposition of Discipline**

Upon entry of respondent's default, the factual allegations in the NDCs are deemed admitted and no further proof is required to establish the truth of such facts. (Rule 5.82.) As set forth below in greater detail, the factual allegations in the NDCs support the conclusion that respondent is culpable as charged and, therefore, violated a statute, rule, or court order that would warrant the imposition of discipline. (Rule 5.85(E)(1)(d)).

#### **First NDC**

##### **1. Case Number 09-O-13229 (The Edwards Matter)**

Count One – respondent willfully violated rule 1-300(B) of the Rules of Professional Conduct (unauthorized practice of law (UPL) in another jurisdiction) by accepting employment with Arthur Edwards (Edwards) to perform legal services in connection with a home mortgage loan modification in Massachusetts, a jurisdiction where respondent was not and has never been admitted to practice law and, by so doing, violated the regulations of the profession in that jurisdiction.

Count Two – respondent willfully violated rule 4-200(A) of the Rules of Professional Conduct (illegal fee) by entering into an agreement to charge and collect a fee for legal services from Edwards in February 2009, when respondent was not admitted to practice law in Massachusetts, *and* by actually charging and collecting a \$4,500 fee for legal services, when he was not admitted to the practice of law in Massachusetts.

##### **2. Case Number 09-O-13420 (The Simeroth Matter)**

Count Three – respondent willfully violated rule 3-110(A) of the Rules of Professional Conduct (failure to perform services competently) by failing to perform any legal services in

connection with negotiating and obtaining a loan modification for his client's residential home mortgage loan, as he was hired to do.

Count Four – respondent willfully violated section 6068, subdivision (m) (failure to communicate/respond to client inquiries) by failing to provide an update to his client, as he told her he would, in response to the client's May 11, 2009 call to him in which she asked him about the status of her loan modification application.

Count Five – respondent willfully violated rule 3-700(A)(2) of the Rules of Professional Conduct (improper withdrawal from employment) by effectively withdrawing from representation and failing to inform his client of his withdrawal from employment and by failing to take reasonable steps to avoid foreseeable prejudice to the rights of his client, including complying with rule 3-700(D).

Count Six – respondent, who at no time performed any legal service of value to his client, willfully violated rule 3-700(D)(2) of the Rules of Professional Conduct (failing to promptly refund unearned fees) by failing, upon termination of employment, to refund to his client any part of the \$2,000 unearned legal fee, which she had advanced to him.

### **3. Case Number 09-O-13673 (The McWilliams Matter)**

Count Seven – respondent willfully violated rule 1-300(B) of the Rules of Professional Conduct by accepting employment with John and Giuiana McWilliams (the McWilliamses) to perform legal services in connection with a home mortgage loan modification for their property in Nevada, a jurisdiction where respondent was not admitted to practice law and, by so doing, violated the regulations of the profession in that jurisdiction.

Count Eight – respondent willfully violated rule 4-200(A) by entering an agreement with the McWilliamses on December 3, 2008, to charge and collect a fee for legal services when he

was not entitled to practice law in Nevada *and* by actually charging and collecting a \$2,395 fee when he was not entitled to practice law in Nevada.

**4. Case Number 09-O-14354 (The Robertson Matter)**

Count Nine – respondent willfully violated rule 3-110(A) of the Rules of Professional Conduct by failing to perform any legal services in connection with negotiating and obtaining for his client, Julie Robertson (Robertson), a modification of her residential home mortgage loan, as he was hired to do.

Count Ten – respondent willfully violated rule 3-700(A)(2) of the Rules of Professional Conduct by effectively withdrawing from representation and failing to inform his client of his withdrawal from employment, and by failing to take reasonable steps to avoid foreseeable prejudice to the rights of his client, including complying with rule 3-700(D).

Count Eleven – respondent, who at no time performed any legal service in connection with his Robertson’s loan modification, as he was hired to do, willfully violated rule 3-700(D)(2) of the Rules of Professional Conduct by failing, upon termination of employment, to refund to Robertson any part of the \$2,495 unearned legal fee that she had paid to him.

**5. Case Number 09-O-15728 (The Redman Matter)**

Count Twelve – respondent willfully violated rule 1-300(B) of the Rules of Professional Conduct by accepting employment with Paul Redman (Redman) to perform legal services in connection with a home mortgage loan modification for Redman’s property in Nevada, a jurisdiction where respondent was not admitted to practice law, and by so doing violated the regulations of the profession in that jurisdiction.

Count Thirteen<sup>4</sup> – respondent willfully violated rule 4-200(A) by entering an agreement with Redman to charge and collect a fee for legal services when he was not admitted to practice in Nevada *and* by actually charging and collecting an \$800 legal fee on February 17, 2009, when he was not entitled to practice law in Nevada.

**6. Case Number 09-O-15948 (The Accurso Matter)**

Count Fourteen – respondent willfully violated rule 1-300(B) of the Rules of Professional Conduct by accepting employment with Vincent Accurso (Accurso) in connection with a home mortgage loan modification for his property in Nevada, a jurisdiction where respondent was not, nor has ever been, admitted to practice law and by so doing violated the regulations of the profession in that jurisdiction.

Count Fifteen – respondent willfully violated rule 4-200(A) by entering an agreement with Accurso to charge and collect a fee for legal services when he was not admitted to practice in Nevada *and* by actually charging and collecting a \$2,395 fee for legal services, on February 1, 2009, when he was not admitted to practice in Nevada.

**7. Case Number 09-O-15981 (The Sensbach Matter)**

Count Sixteen – respondent willfully violated rule 1-300(B) of the Rules of Professional Conduct by accepting employment with Alan Sensbach (Sensbach) in connection with a home mortgage loan modification for Sensbach’s property in Nevada, a jurisdiction where respondent was not, nor has ever been, admitted to practice law, and by so doing violated the regulations of the profession in that jurisdiction.

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<sup>4</sup> What is an apparent clerical error exists in Count Thirteen of the First NDC. At page 11 of the First NDC at line 19, the case number assigned to Count Thirteen is case No. 09-O-13673. However, case No. 09-O-13673 is the case number assigned to the McWilliams matter, not the Redman matter. As the allegations in Count Thirteen clearly refer to Paul Redman, the harm is *de minimis*.



Count Seventeen – respondent willfully violated rule 4-200(A) by entering an agreement with Sensbach to charge and collect a fee for legal services when he was not admitted to practice in Nevada *and* by actually charging and collecting a \$1,500 fee for legal services on February 6, 2009, when he was not admitted to practice in Nevada.

**8. Case Number 10-O-06637 (The Watson Matter)**

Count Eighteen – respondent willfully violated rule 3-110(A) of the Rules of Professional Conduct by failing to perform any legal services in connection with obtaining for his client, James Watson (Watson), a modification of Watson’s residential home mortgage loan, as respondent was hired to do.

Count Nineteen – respondent willfully violated rule 3-700(A)(2) of the Rules of Professional Conduct by effectively withdrawing from representation, failing to inform his client of his withdrawal from employment, and failing to take reasonable steps to avoid foreseeable prejudice to the rights of his client, including complying with rule 3-700(D).

Count Twenty – respondent willfully violated section 6068, subdivision (m) by failing to get back to Watson, after promising to provide him with the status information that Watson had requested, and by, thereafter, failing to return any of Watson’s subsequent numerous phone calls and messages seeking an update from respondent on the status of his case.

Count Twenty-One – respondent, who at no time performed any legal service in connection with his Watson’s loan modification, as he was hired to do, willfully violated rule 3-700(D)(2) of the Rules of Professional Conduct by failing, upon termination of employment to refund to Watson any part of the \$3,500 unearned legal fee that Watson had advanced to him.

**9. Case Number 10-O-08119 (The Jereza Matter)**

Count Twenty-Two – respondent willfully violated rule 3-110(A) of the Rules of Professional Conduct by failing to perform any legal services in connection with obtaining for

his clients, Romuilo and Elenita Jereza (the Jerezas), a modification of their residential home mortgage loan, as respondent was hired to do.

Count Twenty-Three – respondent willfully violated rule 3-700(A)(2) of the Rules of Professional Conduct by effectively withdrawing from representation and failing to inform his clients of his withdrawal from employment, and by failing to take reasonable steps to avoid foreseeable prejudice to their rights, including complying with rule 3-700(D).

Count Twenty-Four – respondent willfully violated section 6068, subdivision (m) by failing to respond to any of the Jerezas' numerous phone calls requesting that respondent return their calls and provide them with an update regarding the status of their case

Count Twenty-Five – respondent, who at no time performed any legal service in connection with the Jerezas' loan modification, as he was hired to do, willfully violated rule 3-700(D)(2) of the Rules of Professional Conduct by failing upon termination his employment to refund to the Jerezas any part of the \$2,400 unearned legal fee that they had advanced to respondent.

#### **10 Case Number 11-O-13395 (The Lucero Matter)**

Count Twenty-Six – respondent willfully violated rule 1-300(B) of the Rules of Professional Conduct by accepting employment with Robert Lucero (Lucero) in connection with a home mortgage loan modification for Lucero's property in Nevada, a jurisdiction where respondent was not, nor has ever has been, admitted to practice law, and by so doing violated the regulations of the profession in that jurisdiction.

Count Twenty-Seven – respondent willfully violated rule 4-200(A) by entering an agreement with Lucero on February 10, 2009, to charge and collect a fee for legal services when respondent was not admitted to practice law in Nevada *and* by actually charging and collecting a

\$900 fee for legal services from Lucero on February 10, 2009, and an \$895 fee for legal services from Lucero on February 25, 2009, when respondent was not admitted to practice law in Nevada.

**11. Case Number 11-O-15813 (The San Nicolas Matter)**

Count Twenty-Eight – respondent willfully violated rule 3-110(A) of the Rules of Professional Conduct by failing to perform any legal services in connection with negotiating and obtaining, a modification of his clients', Rosann and Randy San Nicolas, residential home mortgage loan, as he was hired to do.

Count Twenty-Nine – respondent willfully violated rule 3-700(A)(2) of the Rules of Professional Conduct by effectively withdrawing from representation and failing to inform his clients of his withdrawal from employment, and, by failing to take reasonable steps to avoid foreseeable prejudice to the rights of his clients, including complying with rule 3-700(D).

Count Thirty – respondent, who at no time performed any legal service in connection with negotiating and obtaining a home loan modification for the Nicolases, as he was hired to do, willfully violated rule 3-700(D)(2) of the Rules of Professional Conduct by failing, at the time of his termination from employment to refund to his clients any part of the \$2,100 unearned legal fee that the clients had advanced to him.

**12. Case Number 12-O-13637 (The Bieker Matter)**

Count Thirty-One – respondent willfully violated rule 1-300(B) of the Rules of Professional Conduct by accepting employment with the Donald and Kami Bieker (the Biekers) in connection with a home mortgage loan modification for their property in Oregon, a jurisdiction where respondent is not, nor has ever been, admitted to practice law, and by so doing practiced law in Oregon in violation of the regulations of the profession in that jurisdiction.

Count Thirty-Two – respondent willfully violated rule 4-200(A) by entering an agreement with the Biekers to charge and collect a fee for legal services when he was not

admitted to practice law in Oregon *and* by actually charging and collecting a \$3,500 fee for legal services on February 6, 2009, when he was not admitted to practice in Oregon.

**13. Case Numbers 09-O-13229; 09-O-13673; 09-O-15728; 09-O-15948; 09-O-15981; 11-O-13395; 12-O-13637 (Moral Turpitude)**

Count Thirty-Three – respondent willfully violated Business and Professions Code section 6106 (commission of an act of moral turpitude, dishonesty or corruption) by engaging in a scheme to defraud and exploit each of the clients referenced in the above-listed cases for respondent’s own personal gain by accepting employment with each of said clients and charging and collecting fees from each of them in jurisdictions, where he was not licensed to practice law.

**14. Case Numbers 09-O-13420; 09-O-14354; 10-O-08119; 11-O-15813 (Moral Turpitude)**

Count Thirty-Four – respondent willfully violated section 6106 of the Business and Professions Code by engaging in a scheme to defraud and exploit each of the clients referenced in the above-listed cases for his personal gain, by accepting employment and fees for the services for which he was retained, while having no intention to perform legal services on behalf of said clients.

**Second NDC**

**1. Case Number 12-O-13636 (The Madrigal Matter)**

Count One – respondent willfully violated rule 3-110(A) of the Rules of Professional Conduct by failing to perform any legal services in connection with negotiating and obtaining for his clients, Martin and Jeanne Madrigal (the Madrigals), a modification of their residential home mortgage loan, as he was hired to do.

Count Two – respondent willfully violated Business and Professions Code section 6068, subdivision (m), by failing to return any of the clients’ numerous voice mail messages (all of

which he received), requesting that respondent return their calls and provide them with a status update in the matter for which he had been retained to provide legal services.

Count Three – respondent willfully violated rule 3-700(A)(2) of the Rules of Professional Conduct by effectively withdrawing from representation and failing to inform his clients of his withdrawal from employment, and by failing to take reasonable steps to avoid foreseeable prejudice to the rights of his clients, including complying with rule 3-700(D).

Count Four –respondent, who at no time performed any legal service in connection with negotiating and obtaining a home loan modification for the Madrigals, as he was hired to do, willfully violated rule 3-700(D)(2) of the Rules of Professional Conduct by failing, at the time of his termination from his employment to refund any part of the \$1,395 unearned fee, which the Madrigals advanced to him on December 23, 2008, and by also failing to return any part of the \$1,605 unearned fee, which the Madrigals advanced to him on January 23, 2009.

Count Five – respondent willfully violated section 6068, subdivision (i) (failing to cooperate/participate in a disciplinary investigation), by failing to cooperate with a State Bar investigator’s May 21, 2012 letter, requesting that respondent provide a written response by June 5, 2012, to the allegations of misconduct made against respondent by the Madrigals.

### **Disbarment is Recommended**

Based on the above, the court concludes that the requirements of rule 5.85(E) have been satisfied and respondent’s disbarment is recommended. In particular:

- (1) the NDCs were properly served on respondent under rule 5.25;
- (2) respondent had actual notice of this proceeding and adequate notice of the trial date prior to entry of the default;
- (3) the default was properly entered under rule 5.81; and

(4) the factual allegations in the NDCs deemed admitted by the entry of the default support a finding that respondent violated a statute, rule or court order that would warrant the imposition of discipline.

Despite adequate notice and opportunity, respondent failed to appear for the trial of this disciplinary proceeding. As set forth in the Rules of Procedure of the State Bar, the court recommends disbarment.

### **RECOMMENDATION**

#### **Disbarment**

The court recommends that respondent Christopher Lee Diener be disbarred from the practice of law in the State of California and that his name be stricken from the roll of attorneys.

#### **Restitution**

The court recommends that respondent be ordered to make restitution to the following payees:

(1) Arthur Edwards in the amount of \$4,500 plus 10 percent interest per year from February 15, 2009;

(2) Peggy Simeroth as follows: (i) \$500 plus 10 percent interest per year from February 26, 2009, and (ii) \$1,500 plus 10 percent interest per year from March 13, 2009;

(3) John and Giuiana McWilliams in the amount of \$2,395 plus 10 percent interest per year from December 3, 2008;

(4) Julie Robertson in the amount of \$2,495 plus 10 percent interest per year from February 20, 2009;

(5) Paul Redman in the amount of \$800 plus 10 percent interest per year from February 17, 2009;

(6) Vincent Accurso in the amount of \$2,395 plus 10 percent interest per year from February 1, 2009;

(7) Alan Sensbach in the amount of \$1,500 plus 10 percent interest per year from February 6, 2009;

(8) James Watson in the amount of \$3,500 plus 10 percent interest per year from January 1, 2009;

(9) Romuilo and Elenita Jereza in the amount of \$2,400 plus 10 percent interest per year from February 20, 2009;

(10) Robert Lucero as follows: (i) \$900 plus 10 percent interest per year from February 10, 2009, and (ii) \$895 plus 10 percent interest per year from February 25, 2009;

(11) Rosann and Randy San Nicolas in the amount of \$2,100 plus 10 percent interest per year from January 29, 2009;

(12) Donald and Kami Bieker in the amount of \$3,500 plus 10 percent interest per year from June 3, 2009; and

(13) Martin and Jeanne Madrigal as follows: (i) \$1,395 plus 10 percent interest per year from December 23, 2008, and (ii) \$1,605 plus 10 percent interest per year from January 23, 2009.

Any restitution owed to the Client Security Fund is enforceable as provided in Business and Professions Code section 6140.5, subdivisions (c) and (d).

**California Rules of Court, Rule 9.20**

The court also recommends that respondent be ordered to comply with the requirements of California Rules of Court, rule 9.20, and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 days, respectively, after the effective date of the Supreme Court order in this proceeding.

**Costs**

The court further recommends that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and that the costs be enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

**ORDER OF INVOLUNTARY INACTIVE ENROLLMENT**

In accordance with Business and Professions Code section 6007, subdivision (c)(4), the court orders that Christopher Lee Diener, State Bar Number 187890, be involuntarily enrolled as an inactive member of the State Bar of California, effective three calendar days after the service of this decision and order. (Rule 5.111(D).)

Dated: May 13, 2014

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RICHARD A. PLATEL  
Judge of the State Bar Court